

2011 Jul-14 PM 04:34
U.S. DISTRICT COURT
N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

JAMON T. BRIM, *
Plaintiff, * 10-CV-00369-IPJ
vs. * February 25, 2011
* Florence, Alabama
* 9:02 a.m.
MIDLAND CREDIT MANAGEMENT, *
INC., *
Defendant. *

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE INGE P. JOHNSON
UNITED STATES DISTRICT JUDGE

VOLUME IV

FOR THE PLAINTIFF:

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1 Let the record show this is CV-10-369,
2 Jamon Brim versus Midland Credit Management, Inc.
3 Let the record show the parties are present. The
4 attorneys are present. The jury is present. I
09:22:12 5 trust you had a good night.

6 The defendant has rested. That means at
7 this time I'm going to read you the law that you
8 should apply to the facts as you find them to be.
9 And you should have a copy each. Is there one on
09:22:24 10 the seat for each person? That's yours. You can
11 either follow along or listen, or you can use it
12 to make notes. That's yours to take to the jury
13 room when you deliberate.

14 And if for some reason I start coughing,
09:22:38 15 you just have to bear with me. Don't continue
16 reading, though. I do have to read it to you on
17 the record. Okay?

18 Ladies and gentlemen of the jury, we have
19 now reached that point in the trial where it is
09:22:48 20 the Court's obligation to instruct you with
21 respect to the law that you should apply to the
22 facts as you find them to be. These various
23 principles of law should be understood in the
24 context of each other.

09:22:58 25 When a judge and a jury sit together as a

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1 court of law, it is the duty of the judge to see
2 that the trial progresses in an orderly fashion,
3 to rule upon all legal matters that are
4 presented, to define the issues involved, and
09:23:12 5 instruct the jury as to the law applicable to the
6 particular case.

7 It will be your duty, as jurors, to follow
8 the law as so stated to you by the judge. You
9 will, therefore, render a verdict in accordance
09:23:22 10 with the facts as you determine them to be from
11 the evidence and the law as given to you by the
12 Court.

13 I charge you that any ruling, statement,
14 or expression that may have been made by me
09:23:38 15 during the course of this trial is not to be
16 considered by you as any effort on my part to
17 convey to you any feeling or opinion about the
18 facts in this case or the credibility of any
19 witness. I do not have any such opinion.

09:23:52 20 When a person files a lawsuit, the person
21 or entity sued has a right to file an answer.
22 The fact that a lawsuit is filed does not give
23 rise to an inference that the plaintiff is
24 entitled to recover. When a complaint and answer
09:24:10 25 have been filed, a dispute exists which then is

1 presented during a trial for your determination.

2 In this case, the plaintiff is Jamon T.
3 Brim. The defendant is Midland Credit
4 Management, Inc. They are the only parties to
09:24:24 5 this lawsuit.

6 The Court charges you that although the
7 defendant in this case is a corporation, you are
8 not to consider its status as a business in
9 deciding the merits of this case. The Court
09:24:38 10 charges you that for purposes of this case, the
11 defendant is entitled to the same consideration
12 as an individual such as the plaintiff.

13 A corporation may only act through natural
14 persons as its agents or employees, and, in
09:24:54 15 general, any agent or employee of a corporation
16 may bind the corporation by his or her acts and
17 declarations made while acting within the scope
18 of his or her duties as an employee of the
19 corporation.

09:25:06 20 In this case, the plaintiff has the burden
21 of proof; that is, the burden to establish by a
22 preponderance of the evidence that he is entitled
23 to recover.

24 To establish by a preponderance of the
09:25:26 25 evidence means to prove that something is more

1 likely so than not so. In other words, a
2 preponderance of the evidence in the case means
3 such evidence, as when considered and compared
4 with that opposed to it, has more convincing
09:25:44 5 force and produces, in your minds, belief that
6 what is sought to be proved is more likely true
7 than not.

8 If the evidence is so evenly balanced that
9 you are unable to say that the evidence on either
09:25:56 10 side of the issue is more convincing, your
11 finding on that issue must be against the
12 plaintiff.

13 The preponderance of the evidence burden
14 does not, of course, require proof to an absolute
09:26:10 15 certainty, since proof to an absolute certainty
16 is seldom possible in any case.

17 In determining whether any fact in issue
18 has been proved by a preponderance of the
19 evidence in the case, the jury may, unless
09:26:22 20 instructed otherwise, consider the testimony of
21 all the witnesses, regardless of who may have
22 called them, and all exhibits received into
23 evidence, regardless of who may have produced
24 them.

09:26:34 25 In this case, the plaintiff, Jamon T.

1 Brim, claims that he was damaged by defendant,
2 Midland Credit Management Inc.'s, negligent or
3 willful violation of the Fair Credit Reporting
4 Act in 15 U.S. Code, Section 1681.

09:26:54 5 Specifically, the plaintiff asserts that
6 the defendant failed to investigate his dispute
7 in a reasonable fashions; that is, the
8 defendant's use of the automated batch interface
9 system was unreasonable and, therefore, a
09:27:06 10 violation of the plaintiff's rights under the
11 act.

12 The plaintiff claims that the defendant
13 negligently or willfully failed to comply with
14 the Fair Credit Reporting Act in failing to
09:27:16 15 review the information provided to defendant by
16 Experian, Equifax, and Transunion and in failing
17 to reasonably investigate his dispute; that is,
18 the plaintiff claims that the defendant's system
19 for reviewing a dispute was unreasonable.

09:27:32 20 The defendant denies that it negligently
21 or willfully violated any provision of the Fair
22 Credit Reporting Act. The defendant claims that
23 its procedures when it received notice of a
24 dispute from a consumer and/or consumer reporting
09:27:46 25 agency were reasonable, and it claims that the

1 procedures it employed in handling the disputes
2 stemming from Mr. Brim's purchase of his computer
3 from Dell were reasonable.

4 It is for you to determine whether the
09:27:58 5 defendant acted in a reasonable manner.

6 The relevant text of the Fair Credit
7 Reporting Act, which is found in 15 U.S. Code,
8 Section 1681s-2(b) states as follows: Duties of
9 furnishers of information upon notice of dispute,
09:28:18 10 One, in general, after receiving notice pursuant
11 to Section 1681i(a)(2) of this title of a dispute
12 with regard to the completeness or accuracy of
13 any information provided by a person to a
14 consumer reporting agency, the person shall, A,
09:28:40 15 conduct an investigation with respect to the
16 disputed information; B, review all relevant
17 information provided by the consumer reporting
18 agency pursuant to Section 1681i(a)(2) of the
19 this title; C, report the result of the
09:29:00 20 investigation to the consumer reporting agency;
21 D, if the investigation finds that the
22 information is incomplete or inaccurate, report
23 those results to all other consumer reporting
24 agencies to which the person furnished the
09:29:16 25 information and that compile and maintain files

1 on consumers on a nationwide basis; and E, if an
2 item of information disputed by a consumer is
3 found to be inaccurate or incomplete and cannot
4 be verified after reinvestigation under Paragraph
5 (1), for purposes of reporting to a consumer
6 reporting agency only, as appropriate, based on
7 the results of the investigation promptly, (i),
8 modify that item of information, (ii), delete
9 that item of information, or (iii), permanently
10 block the reporting of that item of information.

11 I charge you that, for purposes of this
12 case, the plaintiff is a consumer entitled to the
13 protections and benefits of the Fair Credit
14 Reporting Act.

15 To prevail on his claim that the defendant
16 negligently failed to comply with the Fair Credit
17 Reporting Act, the plaintiff must establish each
18 of the elements of such a claim by a
19 preponderance of the evidence.

20 The first element requires proof of one or
21 more of the following: A, that the defendant
22 failed to conduct a reasonable investigation with
23 respect to the dispute of credit information; or,
24 B, that the defendant failed to review and
25 consider all relevant information provided by the

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1 consumer reporting agencies; and, Two, that the
2 plaintiff was damaged by the alleged violation or
3 violations of the act; and Three, that the
4 negligence of the defendant, Midland Credit
09:30:56 5 Management, Inc., proximately caused the damage
6 suffered by the plaintiff.

7 Your verdict would be for the plaintiff if
8 you find that the defendant negligently violated
9 the act; that the plaintiff was injured; and that
09:31:10 10 defendant's negligent violation of the act was
11 the proximate cause of the plaintiff's injury.

12 Your verdict must be for the defendant if
13 you find that the plaintiff failed to establish
14 any one of these elements.

09:31:22 15 In this case, the parties have stipulated
16 to the facts read to you by the Court at the
17 beginning of this case. That means that you must
18 take these facts as proved. No further evidence
19 in this case is required to accept these facts as
09:31:40 20 true.

21 The term, "negligence," means the failure
22 to do something that a reasonably-prudent entity
23 would do or the doing of something that a
24 reasonably-prudent entity would not do under the
09:31:54 25 circumstances you find existed in this case. You

1 are to decide what a reasonably-prudent entity
2 would do or not do under the circumstances.

3 The term, "proximate cause," means that
4 there must be a causal connection between the
09:32:10 5 conduct of the defendant that the plaintiff
6 claims was negligent and the damage complained of
7 by the plaintiff is the natural, probable result
8 of that conduct.

9 The plaintiff further claims that the
09:32:24 10 defendant willfully failed to comply with the
11 Fair Credit Reporting Act. The plaintiff has the
12 burden of proving each of the following elements
13 of such a claim by a preponderance of the
14 evidence. One: That the defendant willfully
09:32:40 15 failed to comply with the Fair Credit Reporting
16 Act by, A, willfully failing to conduct a
17 reasonable investigation with respect to the
18 dispute of credit information or by willfully
19 failing to review and consider all relevant
09:32:56 20 information provided by the consumer reporting
21 agencies; and Two, that the plaintiff was damaged
22 by the alleged violation or violations of the
23 act; and Three, that the willful failure of
24 Midland Credit Management, Inc. to comply with
09:33:10 25 the act proximately called the damage suffered by

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1 the plaintiff.

2 Your verdict will be for the plaintiff if
3 you find that the plaintiff proved that the
4 defendant willfully failed to comply with the
09:33:20 5 act; that the plaintiff was injured; and that
6 defendant's willful violation of the act was the
7 proximate cause of the plaintiff's injury.

8 Your verdict must be for the defendant if
9 you find that the plaintiff failed to establish
09:33:36 10 any one of these elements.

11 To prove a willful violation, a consumer
12 must prove that a consumer reporting agency
13 either knowingly or recklessly violated the
14 requirements of the act. To prove a reckless
09:33:54 15 violation, a consumer must establish that the
16 action of the agency is not only a violation
17 under a reasonable reading of the statute's terms
18 but shows that the company ran a risk of
19 violating the law substantially greater than the
09:34:08 20 risk associated with a reading that was merely
21 careless.

22 Now, I want to also tell you here that the
23 definition of proximate cause is, for purposes of
24 the plaintiff's claim of willful violation of the
09:34:26 25 act -- that definition that I gave you under the

1 explanation on the previous page with respect to
2 the plaintiff's claim for negligent violation of
3 the act, that term is defined the same way.

4 Defendant, Midland Credit Management,
09:34:40 5 Inc., was required to conduct a reasonable
6 investigation. Factors to be considered in
7 determining whether the defendant has conducted a
8 reasonable investigation include whether the
9 consumer; that is, Mr. Brim, alerted the
09:34:54 10 defendant that its information was unreliable and
11 whether the credit bureaus alerted the defendant
12 that Mr. Brim contested the debt in question.
13 You may also consider the cost of verifying the
14 accuracy of the information versus the harm of
09:35:08 15 reporting inaccurate information.

16 The standard for such an investigation is
17 what a reasonably-prudent entity would do under
18 the same or similar circumstances. Evaluating
19 the reasonableness of the defendant's actions
09:35:24 20 involves weighing the potential harm from
21 inaccuracy against the burden of safeguarding
22 against such inaccuracies.

23 An investigation is a detailed inquiry or
24 systematic examination. The plain meaning of,
09:35:38 25 quote, investigation, unquote, requires some

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1 degree of careful inquiry by a furnisher of
2 credit information.

3 The law requires that after receiving
4 notice of a consumer's dispute through a consumer
09:35:52 5 reporting agency, a creditor, such as the
6 defendant, may not furnish any information
7 relating to that consumer if the creditor knows
8 the information is inaccurate.

9 Damages to be recovered are limited to
09:36:04 10 those, if any, arising from a negligent or
11 willful failure to conduct a reasonable
12 investigation. If your verdict is for the
13 plaintiff on the claim of negligent
14 noncompliance, then you must determine the amount
09:36:18 15 of damages, if any, that reasonably, fairly, and
16 adequately compensate for the injury caused by
17 the defendant's violation of the law. If you
18 find that the defendant negligently violated the
19 Fair Credit Reporting Act, you may award
09:36:36 20 compensatory or actual damages as I will define
21 that term for you in a moment.

22 If you find that the defendant willfully
23 violated the act, damages recoverable are two
24 kinds. First, there are damages that are
09:36:48 25 actually suffered by reason of the alleged wrong.

1 If you find that the defendant willfully violated
2 the Fair Credit Reporting Act by failing to
3 follow reasonable procedures in its investigation
4 of the plaintiff's dispute, you must award the
09:37:02 5 plaintiff the actual damages that you find he
6 sustained as a result of this failure.

7 If you find that the plaintiff suffered no
8 actual damages or damages of less than \$100 as a
9 result of the willful violations, then you must
09:37:18 10 award statutory damages.

11 Statutory damages are those damages fixed
12 by law. I instruct you that, under the Fair
13 Credit Reporting Act, statutory damages
14 applicable to the facts of this case are no less
09:37:30 15 than \$100 but no more than \$1,000. These are
16 damages fixed by statute and are separate from
17 any actual damages.

18 As I have stated to you, you may only
19 award statutory damages if you find the plaintiff
09:37:46 20 to have suffered no actual damages or damages of
21 less than \$100.

22 Second, there are punitive damages, which
23 means damages over, above, and different from
24 actual damages. I will explain punitive damages
09:38:02 25 further in a moment.

1 In considering the issue of the
2 plaintiff's damages, you are instructed that you
3 should assess the amount you find to be justified
4 by a preponderance of the evidence as full, just,
09:38:14 5 and reasonable compensation for all of the
6 respective plaintiff's damages, no more and no
7 less.

8 Whether in regard to negligent or willful
9 violation of the act, compensatory, or actual
09:38:26 10 damages are intended as money compensation to the
11 party wronged to compensate him for the injury
12 and other damages that have been inflicted as the
13 result of or were caused by the wrong complained
14 of.

09:38:40 15 Compensatory or actual damages are allowed
16 and should be awarded where a party satisfied the
17 jury by a preponderance of the evidence that the
18 party has been injured or damaged by the wrongful
19 act or acts of the party charged.

09:38:54 20 The purpose of awarding compensatory
21 damages is to fairly and reasonably compensate
22 the injured party for the loss or injury actually
23 sustained. Compensatory damages are not allowed
24 as a punishment and must not be imposed or
09:39:08 25 increased to penalize the defendant.

1 Also, compensatory damages must not be
2 based on speculation or guesswork, because it is
3 only actual damages that are recoverable. Actual
4 damages include recovery for any out-of-pocket
09:39:22 5 expenses and damages for personal humiliation,
6 embarrassment, anguish, and emotional distress.

7 On the other hand, compensatory damages
8 are not restricted to actual loss of time or
9 money. They cover both the mental and physical
09:39:38 10 aspects of the injury, tangible and intangible.
11 Thus, no evidence of the value of such intangible
12 things as emotional and mental anguish has been
13 or need be introduced.

14 In that respect, it is not value you are
09:39:52 15 trying to determine but an amount that will
16 fairly compensate the plaintiff for those claims
17 of damage. There is no exact standard to be
18 applied. Any such award should be fair and just
19 in the light of the evidence. This element of
09:40:12 20 damages is left to your good sound judgment and
21 discretion as to what amount would reasonably and
22 fairly compensate the plaintiff for such
23 emotional distress you find from the evidence he
24 did suffer.

09:40:22 25 Proof of an outright denial of credit is

1 not necessary in order for you to award actual
2 damages under the Fair Credit Reporting Act.

3 If you are satisfied by a preponderance of
4 the evidence that the plaintiff sustained mental
09:40:32 5 or emotional damages as a result of the wrongs in
6 question, you should award a sum which will
7 reasonably and fairly compensate him for such
8 emotional distress.

9 If you, as a juror, further find that the
09:40:46 10 acts or omissions of the defendant that
11 proximately caused the actual injury or damage to
12 the plaintiff were willfully done, then you may,
13 if, in the exercise of your discretion, you
14 unanimously choose to do so, add to the award of
09:41:02 15 actual damages such amount as you shall
16 unanimously agree to be proper as punitive
17 damages.

18 Whether or not to make any award of
19 punitive damages in addition to actual damages is
09:41:12 20 a matter exclusively within your province. If
21 you find only negligent violations of the act,
22 you would not reach the issue of punitive
23 damages.

24 Punitive damages are awarded for the
09:41:26 25 purpose of punishing the defendant for its

1 wrongful conduct and to deter others from
2 engaging in similar wrongful conduct. You should
3 bear in mind, however, that the law requires that
4 the amount of punitive damages, if any, must be
09:41:40 5 fixed with calm discretion and sound reasoning.
6 Punitive damages must never be awarded due to
7 sympathy, bias, or prejudice with respect to the
8 parties.

9 If you choose to award punitive damages
09:41:52 10 against the defendant, Midland Credit Management,
11 Inc., for willful violation of the Fair Credit
12 Reporting Act, you may consider the following
13 facts in considering such an award: The stated
14 remedial purpose of the Fair Credit Reporting
09:42:06 15 Act; the harm to the consumer -- the harm the
16 consumer is expected to avoid or have corrected
17 by those requirements; the manner in which the
18 defendant conducted its business; the length of
19 time before the defendant corrected its mistake;
09:42:20 20 the degree of notice provided to the defendant
21 about its mistake, and defendant's awareness of
22 the mistake.

23 If you find that punitive damages should
24 be assessed against the defendant, you may
09:42:32 25 consider the financial resources of the defendant

1 in fixing the amount of such damages.

2 The fact that I have instructed you on the
3 law of damages must not be taken as an indication
4 that you should find for the plaintiff. It is
09:42:44 5 for you to decide on the evidence presented and
6 the rules of the law I have given you whether the
7 plaintiff is entitled to recover from the
8 defendant.

9 Instructions as to the measure of damages
09:43:00 10 are given for your guidance in the event you
11 should find in favor of the plaintiff, in
12 accordance with the other instructions I have
13 given you. However, if you return a verdict for
14 the plaintiff, you must decide the issue of
09:43:14 15 damages.

16 I instruct you that the burden is on the
17 plaintiff to prove by a preponderance of the
18 evidence each item of damages he claims and that
19 each item was caused by Midland Credit
09:43:26 20 Management, Inc. The plaintiff is not required
21 to prove the exact amount of his damages but must
22 show sufficient facts and circumstances to allow
23 you to make a reasonable estimate of each item.
24 If the plaintiff fails to do so, he cannot
09:43:42 25 recover for that item of damage.

1 It is for you, the jury, to decide whether
2 to award compensatory damages and, if so, what
3 amount. Therefore, if you decide that the
4 plaintiff has proven any or all of his claims,
09:43:56 5 then part of your remedies would be to award him
6 compensatory damages if you see fit to do so.

7 If you find for the plaintiff, you must
8 not take into account any consideration of
9 attorneys' fees or court costs in deciding the
09:44:08 10 amount of plaintiff's damages. The matter of
11 attorneys' fees and court costs will be decided
12 later by the Court.

13 You are the sole and exclusive judges of
14 the facts. As such, you must determine which of
09:44:22 15 the witnesses you believe, what portion of their
16 testimony you accept, and what weight you attach
17 to it.

18 At times during the trial, I may have
19 sustained objections to questions asked without
09:44:30 20 permitting the witness to answer. You may not
21 draw any inference from an unanswered question.
22 The law requires that your decision be made
23 solely upon competent evidence before you.

24 Competent evidence is the testimony from
09:44:46 25 the witnesses in person or testimony previously

1 given by deposition and exhibits admitted into
2 evidence by the Court. Statements, arguments,
3 and comments by the lawyers, objections and
4 rulings on objections and testimony I told you to
09:45:00 5 disregard are not evidence. Such items as I
6 exclude from your consideration will be excluded
7 because they are not legally admissible.

8 The law does not, however, require you to
9 accept all the evidence I admit, even though it
09:45:16 10 be competent. In determining what evidence you
11 will accept, you must make your own evaluation of
12 the testimony given by each of the witnesses and
13 determine the degree of weight you choose to give
14 his or her testimony. The testimony of the
09:45:30 15 witness may fail to conform to the facts as they
16 occurred because he or she is intentionally
17 telling a falsehood; because he or she did not
18 accurately see or hear that about which he or she
19 testified; because his or her recollection of the
09:45:44 20 event is faulty; or because he or she has not
21 expressed himself or herself clearly in giving
22 his or her testimony.

23 I also charge you that during the trial, I
24 may sometimes ask a witness a question. Please
09:45:56 25 do not assume that I have any opinion about the

1 subject matter of my questions. I may ask a
2 question simply to clarify a matter, not to help
3 one side of the case or hurt another side.

4 Remember at all times that you, as jurors,
09:46:08 5 are the sole judges of the facts in this case.
6 There is no magical formula by which one may
7 evaluate testimony. You bring with you to this
8 courtroom all of the experience and background of
9 your lives. In your everyday affairs, you
09:46:26 10 determine for yourself the reliability or
11 unreliability of statements made to you by
12 others. The same tests that you use in your
13 dealings are the tests which you apply in your
14 deliberations.

09:46:38 15 The interest or lack of interest of any
16 witness in the outcome of the case, the bias or
17 prejudice of a witness, if there be any, the age,
18 the appearance, the manner in which the witness
19 gives his or her testimony on the stand, the
09:46:52 20 opportunity that the witness had to observe the
21 facts concerning which he or she testifies, the
22 probability or improbability of the witness'
23 testimony, when viewed in light of all the
24 evidence in the case, are all items to be taken
09:47:06 25 into consideration by you in determining the

1 weight, if any, you will assign that witness'
2 testimony.

3 If such consideration makes it appear that
4 there is a discrepancy in the evidence, you will
09:47:16 5 have to consider whether the apparent discrepancy
6 may be reconciled by fitting the two stories
7 together. If, however, that is not possible, you
8 will then have to determine which of the
9 conflicting versions you will accept.

09:47:32 10 You should ask yourself whether there was
11 evidence tending to prove whether the witness
12 testified falsely concerning some important fact
13 or whether there was evidence at some other time
14 the witness said or did something or failed to
09:47:44 15 say or do something which was different from the
16 testimony the witness gave before you during
17 trial.

18 You should keep in mind, of course, that a
19 simple mistake by a witness does not necessarily
09:47:58 20 mean that the witness was not telling the truth
21 as he or she remembers it. Because people
22 naturally tend to forget some things and remember
23 other things incorrectly.

24 So if a witness has made a misstatement,
09:48:08 25 you need to consider whether that misstatement

1 was simply an innocent lapse of memory or an
2 intentional falsehood. And the significance of
3 that may depend on whether it has to do with an
4 important fact or only an unimportant detail.

09:48:22 5 You are to consider only the evidence in
6 the case. But in your consideration of the
7 evidence, you're not limited to the bald
8 statements of the witnesses. In other words, you
9 are not limited solely to what you see and hear
09:48:34 10 as the witnesses testify. You are permitted to
11 draw from facts which you find have been provided
12 such reasonable inferences as seem justified in
13 the light of your experience.

14 Inferences are deductions or conclusions
09:48:50 15 which reason and common sense lead the jury to
16 draw from facts which have been established by
17 the evidence in the case.

18 There are, generally speaking, two types
19 of evidence from which a jury may properly find
09:49:02 20 the truth as to the facts of a case. One is
21 direct evidence, such as the testimony of an
22 eyewitness, or documents which state
23 uncontroverted matters. The other is indirect or
24 circumstantial evidence, the proof of a chain of
09:49:18 25 circumstances pointing to the existence or

1 nonexistence of certain facts. The plaintiff may
2 prove his claims by presenting such indirect
3 evidence.

4 The testimony of a single witness which
09:49:30 5 produces, in your minds, belief in the likelihood
6 of the truth is sufficient for the proof of any
7 facts and would justify a verdict in accordance
8 with such testimony, even though a number of
9 witnesses may have testified to the contrary if,
09:49:44 10 after consideration of all the evidence in the
11 case, you hold greater belief in the accuracy and
12 reliability of the one witness.

13 Also, the number of witnesses testifying
14 regarding any particular issue is not
09:49:56 15 controlling. You are to decide the facts in this
16 case fairly and impartially, without any
17 sympathy, without any prejudice, without any
18 favoritism, and without any fear as to the
19 consequences of your decision.

09:50:10 20 You are to decide what the facts are based
21 upon the evidence that has been presented in the
22 case, not upon the basis of guesswork or
23 speculation. That does not mean, however, that
24 you are expected to leave your common sense
09:50:24 25 behind you. You are expected, instead, to use

1 your common sense in applying and understanding
2 the evidence in this case when you deliberate.

3 In order to return a verdict, it is
4 necessary that each juror agree thereto. Any
09:50:40 5 verdict that you render in this case must be
6 unanimous. This means that each of you must
7 agree to the verdict and all be satisfied with
8 the verdict and that the verdict returned is your
9 verdict.

09:50:54 10 Your verdict in the case should not be
11 based upon or influenced by any sympathy for
12 either party nor any prejudice for or against
13 either party. Your verdict should be based on
14 the evidence in this case that has been presented
09:51:06 15 to you from the witnesses who have testified,
16 whether in person or by deposition, and from the
17 exhibits. And, of course, your verdict should be
18 based on the law as I explain it to you.
19 Sympathy and prejudice should play no role no
09:51:20 20 your verdict whatsoever.

21 When you go to the jury room, you should
22 first select one of your members to act as your
23 foreperson. The foreperson will preside over
24 your deliberations and will speak for you here in
09:51:30 25 court.

Ladies and Gentlemen of the jury, we have now reached that point in the trial where it is the Court's obligation to instruct you with respect to the law that you should apply to the facts as you find them to be. These various principles of law should be understood in the context of each other.

When a judge and a jury sit together as a court of law, it is the duty of the judge to see that the trial progresses in an orderly fashion, to rule upon all legal matters that are presented, to define the issue involved, and instruct the jury as to the law applicable to the particular case.

It will be your duty, as jurors, to follow the law as so stated to you by the judge. You will therefore, render a verdict in accordance with the facts as you determine them to be from the evidence and the law as given to you by the Court.

I charge you that any ruling, statement, or expression that may have been made by me during the course of this trial is not to be considered by you as any effort on my part to convey to you any feeling or opinion about the facts in this case or the credibility of any witness. I do not have any such opinion.

When a person files a lawsuit, the person or entity sued has a right to file an answer. The fact that a lawsuit is filed does not give raise to an inference that the plaintiff is is entitled to recover. When a complaint and answer have been filed, a dispute

exists which then is presented during a trial for your determination.

In this case, the plaintiff, Jamon T. Brim. The Defendant is Midland Credit Management, Inc. They are the only parties to this lawsuit.

The Court charges you that although the defendant in this case is a corporation, you are not to consider its status as a business in deciding the merits of this case. The Court charges you that for purposes of this case, the defendant is entitled to the same consideration as an individual such as the plaintiff.

A corporation may only act through natural persons as its agents or employees, and, in general, any agent or employee of a corporation may bind the corporation by his or her own acts and declarations made while acting within the scope of his or her duties as an employee of the corporation.

In this case, the plaintiff has the burden of proof, that is, the burden to establish by a preponderance of the evidence that he is entitled to recover.

To establish by a preponderance of the evidence means to prove that something is more likely so than not so. In other words, a preponderance of the evidence in this case means such evidence, as when considered and compared with that opposed to it, has more convincing force and produces, in your minds, belief that what is sought to be proved is more likely true than not.

If the evidence is so evenly balanced that you are unable to say that the evidence on either side of the issue is more convincing, your finding on that issue must be against the plaintiff.

The preponderance of the evidence burden does not, of course, require proof to an absolute certainty, since proof to an absolute certainty is seldom possible in any case.

In determining whether any fact an issue has been proven by a preponderance of the evidence in the case, the jury may, unless instructed otherwise, consider the testimony of all the witnesses, regardless of who may have called them, and all exhibits received into evidence, regardless of who may have produced them.

In this case, the Plaintiff, Jamon T. Brim, claims that he was damaged by defendant, Midland Credit Management, Inc.'s negligent or willful violation of the Fair Credit Reporting Act in 15 U.S. Code, Section 1681.

Specifically, the plaintiff asserts that the defendant failed to investigate his dispute in a reasonable fashion; that is, the defendant's use of the automated batch interface system was unreasonable and, therefore, a violation of the plaintiff's rights under the act.

The Plaintiff claims that the defendant negligently or willfully failed to comply with the Fair Credit Reporting Act in failing to review the information provided to defendant by

Experian, Equifax and Trans Union and in failing to reasonably investigate his dispute; that is, the plaintiff claims that the defendant's system for reviewing a dispute was unreasonable.

The defendant denies that it negligently or willfully violated any provision of the Fair Credit Reporting Act. The defendant claims that its procedures when it received notice of a dispute from a consumer and/or consumer reporting agency were reasonable, and it claims that the procedures it employed in handling the disputes stemming from Mr. Brim's purchase of his computer from Dell were reasonable.

It is for you to determine whether the defendant acted in a reasonable manner.

The relevant text of the Fair Credit Reporting Act, which is found in 15 U.S. Code, Section 1681s-2(b) states as follows: Duties of furnishers of information upon notice of dispute, One, in general, after receiving notice pursuant to Section 1681i(a)(2) of this title of a dispute with regard to the completeness or accuracy of any information provided by a person to a consumer reporting agency, the person shall, A, conduct an investigation with respect to the disputed information, B, review all relevant information provided by the consumer reporting agency pursuant to Section 1681i(a)(2) of the this title; C, report the result of the investigation to the consumer reporting agency, D, if the investigation finds that the information is incomplete or

inaccurate, report those results to all other consumer reporting agencies to which the person furnished the information and that compile and maintain files on consumers on a nationwide basis; and E, if an item of information disputed by a consumer is found to be inaccurate or incomplete and cannot be verified after reinvestigation under Paragraph (1), for purposes of reporting to a consumer reporting agency only, as appropriate, based on the results of the investigation promptly, (i) modify that item of information, (ii), delete that item of information, or (iii), permanently block the reporting of that item of information.

I charge you that, for purposes of this case, the plaintiff is a consumer entitled to the protections and benefits of the Fair Credit Reporting Act.

To prevail on his claim that the defendant negligently failed to comply with the Fair Credit Reporting Act, the plaintiff must establish each of the elements of such a claim by a preponderance of the evidence.

The first element requires proof of one or more of the following: A, that the defendant failed to conduct a reasonable investigation with respect to the dispute of credit information; or, B, that the defendant failed to review and consider all relevant information provided by the consumer reporting agencies; and, Two, that the plaintiff was damaged by the alleged violation or violations of the act; and Three, that the negligence of the

defendant, Midland Credit Management, Inc. proximately caused the damage suffered by the Plaintiff.

Your verdict would be for the plaintiff if you find that the defendant negligently violated the act; that the plaintiff was injured; and that defendant's negligent violation of the act was the proximate cause of the plaintiff's injury.

Your verdict must be for the defendant if you find that the plaintiff failed to establish any one of these elements.

In this case, the parties have stipulated to the facts read to you by the Court at the beginning of the case. That means that you must take these facts as proved. No further evidence in this case is required to accept these facts as true.

The term, "negligence," means the failure to do something that a reasonably-prudent entity would do or the doing of something that a reasonably-prudent entity would not do under the circumstances you find existed in this case. You are to decide what a reasonably-prudent entity would do or not do under the circumstances.

The term "proximate cause," means that there must be a causal connection between the conduct of the defendant that the plaintiff claims was negligent and the damage complained of by the plaintiff is the natural, probably result of that conduct.

The plaintiff further claims that the defendant willfully failed to comply with the Fair Credit Reporting Act. The plaintiff

has the burden of proving each of the following elements of such a claim by a preponderance of the evidence. One: That the defendant willfully failed to comply with the Fair Credit Reporting Act by, A, willfully failing to conduct a reasonable investigation with respect to the dispute of credit information or by willfully failing to review and consider all relevant information provided by the consumer reporting agencies; and Two, that the plaintiff was damaged by the alleged violation or violations of the act; and Three, that the willful failure of Midland Credit Management, Inc. to comply with the act proximately caused the damage suffered by the plaintiff.

Your verdict will be for the plaintiff if you find that the plaintiff proved that the defendant willfully failed to comply with the act; that the plaintiff was injured; and that defendant's willful violation of the act was the proximate cause of the plaintiff's injury.

Your verdict must be for the defendant if you find that the plaintiff failed to establish any of these elements.

To prove a willful violation, a consumer must prove that a consumer reporting agency either knowingly or recklessly violated the requirements of the act. To prove a reckless violation, a consumer must establish that the action of the agency is not only a violation under a reasonable reading of the statute's terms but shows that the company ran a risk of violating the law

substantially greater than the risk associated with a reading that was merely careless.

Now, I want to also tell you here that the definition of proximate cause is, for purposes of the plaintiff's claim or willful violation of the act - that definition that I gave you under the explanation on the previous page with respect to the plaintiff's claim for negligent violation of the act, that term is defined the same way.

Defendant, Midland Credit Management, Inc., was required to conduct a reasonable investigation. Factors to be considered in determining whether the defendant has conducted a reasonable investigation include whether the consumer; that is, Mr. Brim, alerted the defendant that its information was unreliable and whether the credit bureaus alerted the defendant that Mr. Brim contested the debt in question. You may also consider the cost of verifying the accuracy of the information versus the harm of reporting inaccurate information.

The standard for such an investigation is what a reasonably-prudent entity would do under the same or similar circumstances. Evaluating the reasonableness of the defendant's actions involves weighing the potential harm from inaccuracy against the burden of safeguarding against such inaccuracies.

An investigation is a detailed inquiry or systematic examination. The plain meaning of, "investigation" requires some degree of careful inquiry by a furnisher of credit information.

The law requires that after receiving notice of a consumer's dispute, through a consumer reporting agency, a creditor, such as the defendant, may not furnish any information relating to that consumer if the creditor knows the information is inaccurate.

Damages to be recovered are limited to those, if any, arising from a negligent or willful failure to conduct a reasonable investigation. If your verdict is for the plaintiff on the claim of negligent noncompliance, then you must determine the amount of damages, if any, that reasonably, fairly, and adequately compensate for the injury caused by the defendant's violation of the law. If you find that the defendant negligently violated the Fair Credit Reporting Act, you may award compensatory or actual damages as I will define that term for you in a moment.

If you find that the defendant willfully violated the act, damages recoverable are two kinds. First, there are damages that are actually suffered by reason of the alleged wrong.

If you find that the defendant willfully violated the Fair Credit Reporting Act by failing to follow reasonable procedures in its investigation of the plaintiff's dispute, you must award the plaintiff the actual damages that you find he sustained as a result of this failure.

If you find that the plaintiff suffered no actual damages or damages of less than \$100 as a result of the willful violations, then you must award statutory damages.

Statutory damages are those damages fixed by law. I instruct you that, under the Fair Credit Reporting Act, statutory damages applicable to the facts in this case are no less than \$100 but no more than \$1,000. These are damages fixed by statute and are separate from any actual damages.

As I have stated to you, you may only award statutory damages if you find the plaintiff to have suffered no actual damages or damages of less than \$100.

Second, there are punitive damages, which means damages over, above, and different from actual damages. I will explain punitive damages further in a moment.

In considering the issue of the plaintiff's damages, you are instructed that you should assess the amount you find to be justified by a preponderance of the evidence as full, just, and reasonable compensation for all of the respective plaintiff's damages, no more and no less.

Whether in regard to negligent or willful violation of the act, compensatory, or actual damages are intended as money compensation to the party wronged to compensate him for the injury and other damages that have been inflicted as the result of or were caused by the wrong complained of.

Compensatory or actual damages are allowed and should be awarded where a party satisfied the jury by a preponderance of the evidence that the party has been injured or damaged by the wrongful act or acts of the party charged.

The purpose of awarding compensatory damages is to fairly and reasonably compensate the injured party for the loss or injury actually sustained. Compensatory damages are not allowed as a punishment and must not be imposed or increased to penalize the defendant.

Also, compensatory damages must not be based on speculation or guesswork, because it is only actual damages that are recoverable. Actual damages include recovery for any out-of-pocket expenses and damages for personal humiliation, embarrassment, anguish, and emotional distress.

On the other hand, compensatory damages are not restricted to actual loss of time or money. They cover both the mental and physical aspects of the injury, tangible and intangible. Thus no evidence of the value of such intangible things as emotional and mental anguish has been or need be introduced.

In that respect, it is not value you are trying to determine but an amount that will fairly compensate the plaintiff for those claims of damage. There is no exact standard to be applied. Any such award should be fair and just in the light of the evidence. This element of damages is left to your good sound judgment and

discretion as to what amount would reasonably and fairly compensate the plaintiff for such emotional distress you find from the evidence he did suffer.

Proof of an outright denial of credit is not necessary in order for you to award actual damages under the Fair Credit Reporting Act.

If you are satisfied by a preponderance of the evidence that the plaintiff sustained mental or emotional damages as a result of the wrongs in question, you should award a sum which will reasonably and fairly compensate him for such emotional distress.

If you, as a juror, further find that the acts or omissions of the defendant that proximately caused the actual injury or damage to the plaintiff were willfully done, then you may, if, in the exercise of your discretion, you unanimously choose to do so, add to the award of actual damages such amount as you shall unanimously agree to be proper as punitive damages.

Whether or not to make an award of punitive damages in addition to actual damages is a matter exclusively within your province. If you find only negligent violations of the act, you would not reach the issue of punitive damages.

Punitive damages are awarded for the purpose of punishing the defendant for its wrongful conduct and to deter others from engaging in similar wrongful conduct. You should bear in mind, however, that the law requires that the amount of punitive damages,

if any, must be fixed with calm discretion and sound reasoning. Punitive damages must never be awarded due to sympathy, bias, or prejudice with respect to the parties.

If you so choose to award punitive damages against the defendant, Midland Credit Management, Inc., for willful violation of the Fair Credit Reporting Act, you may consider the following facts in considering such an award: The stated remedial purpose of the Fair Credit Reporting Act; the harm to the consumer - the harm the consumer is expected to avoid or to have corrected by those requirements; the manner in which the defendant conducted its business; the length of time before the defendant corrected its mistake; the degree of notice provided to the defendant about its mistake, and defendant's awareness of the mistake.

If you find that punitive damages should be assessed against the defendant, you may consider the financial resources of the defendant in fixing the amount of such damages.

The fact that I have instructed you on the law of damages must not be taken as an indication that you should find for the plaintiff. It is for you to decide on the evidence presented and the rules of the law I have given you whether the plaintiff is entitled to recover from the defendant.

Instructions as to the measure of damages are given for your guidance in the event you should find in favor of the plaintiff, in accordance with the other instructions I have given you.

However, if you return a verdict for the plaintiff, you must decide the issue of damages.

I instruct you that the burden is on the plaintiff to prove by a preponderance of the evidence each item of damages he claims and that each item was caused by Midland Credit Management, Inc. The plaintiff is not required to prove the exact amount of his damages but must show sufficient facts and circumstances to allow you to make a reasonable estimate of each item. If the plaintiff fails to do so, he cannot recover for that item of damage.

It is for you, the jury, to decide whether to award compensatory damages and, if so, what amount. Therefore, if you decide that the plaintiff has proven any or all of his claims, then part of your remedies would be to award him compensatory damages if you see fit to do so.

If you find for the plaintiff, you must not take into account any consideration of attorneys' fees or court costs in deciding the amount of plaintiff's damages. The matter of attorneys' fees and court costs will be decided later by the Court.

You are the sole exclusive judges of the facts. As such, you must determine which of the witnesses you believe, what portion of their testimony you accept, and what weight you attach to it.

At times during the trial, I may have sustained objections to questions asked without permitting the witness to answer. You may not draw any inference from an unanswered question. The law

requires that your decision be made solely upon competent evidence before you.

Competent evidence is the testimony from the witnesses in person or testimony previously given by deposition and exhibits admitted into evidence by the Court. Statements, arguments, and comments by the lawyers, objections and rulings on objections and testimony I told you to disregard are not evidence. Such items as I exclude from your consideration will be excluded because they are not legally admissible.

The law does not, however, require you to accept all the evidence I admit, even though it be competent. In determining what evidence you will accept, you must make your own evaluation of the testimony given by each of the witnesses and determine the degree of weight you choose to give his or her testimony. The testimony of the witness may fail to conform to the facts as they occurred because he or she is intentionally telling a falsehood; because he or she did not accurately see or hear that about which he or she testified; because his or her recollection of the event is faulty; or because he or she has not expressed himself or herself clearly in giving his or her testimony.

I also charge you that during the trial, I may sometimes ask a witness a question. Please do not assume that I have any opinion about the subject matter of my questions. I may ask a question

simply to clarify a matter, not to help one side of the case or hurt another side.

Remember all the times that you, as jurors, are the sole judges of the facts in this case. There is no magical formula by which one may evaluate testimony. You bring with you to this courtroom all of the experience and background of your lives. In your everyday affairs, you determine for yourself the reliability or unreliability of statements made to you by others. The same tests that you use in your dealings are the tests which you apply in your deliberations.

The interest or lack of interest of any witness in the outcome of the case, the bias or prejudice of a witness, if there be any, the age, the appearance, the manner in which the witness gives his or her testimony on the stand, the opportunity that the witness had to observe the facts concerning which he or she testifies, the probability or improbability of the witness' testimony, when viewed in light of all the evidence in this case, are all items to be taken into consideration by you in determining the weight, if any, you will assign that witness' testimony.

If such consideration makes it appear that there is a discrepancy in the evidence, you will have to consider whether the apparent discrepancy may be reconciled by fitting the two stories together. If, however, that is not possible, you will then have to determine which of the conflicting versions you will accept.

You should ask yourself whether there was evidence tending to prove whether the witness testified falsely concerning some important fact or whether there was evidence at some other time the witness said or did something or failed to say or do something which was different from the testimony the witness gave before you during trial.

You should keep in mind, of course, that a simple mistake by a witness does not necessarily mean that the witness was not telling the truth as he or she remembers it. Because people naturally tend to forget some things and remember other things incorrectly.

So if a witness has made a misstatement, you need to consider whether that misstatement was simply an innocent lapse of memory or an intentional falsehood. And the significance of that may depend on whether it has to do with an important fact or only an unimportant detail.

You are to consider only the evidence in the case. But in your consideration of the evidence, you're not limited to the bald statements of the witnesses. In other words, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw from facts which you find have been provided such reasonable inferences as seem justified in the light of your experience.

Inferences are deductions or conclusions which reason and common sense lead the jury to draw from facts which have been established by the evidence in the case.

There are, generally speaking, two types of evidence from which a jury may properly find the truth as to the facts of a case. One is direct evidence, such as testimony of an eyewitnesses, or documents which state uncontroverted matters. The other is indirect or circumstantial evidence, the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The plaintiff may prove his claims by presenting such indirect evidence.

The testimony of a single witness which produces, in your minds, belief in the likelihood of the truth is sufficient for the proof of any facts and would justify a verdict in accordance with such testimony, even though a number of witnesses may have testified to the contrary if, after consideration of all the evidence in the case, you hold greater belief in the accuracy and reliability of the one witness.

Also, the number of witnesses testifying regarding any particular issue is not controlling. You are to decide the facts in this case fairly and impartially, without any sympathy, without any prejudice, without any favoritism, and without any fear as to the consequences of your decision.

You are to decide what the facts are based upon the evidence that has been presented in the case, not upon the basis of guesswork or speculation. That does not mean, however, that you are expected to leave your common sense behind you. You are expected, instead, to use your common sense in applying and understanding the evidence in this case when you deliberate.

In order to return a verdict, it is necessary that each juror agree thereto. Any verdict that you render in this case must be unanimous. This means that each of you must agree to the verdict and that the verdict returned is your verdict.

Your verdict in the case should not be based upon or influenced by any sympathy for either party nor any prejudice for or against either party. Your verdict should be based on the evidence in this case that has been presented to you from the witnesses who have testified, whether in person or by deposition, and from the exhibits. And, of course, your verdict should be based on the law as I explain it to you. Sympathy and prejudice should play no role in your verdict whatsoever.

When you go to the jury room, you should first select one of your members to act as your foreperson. The foreperson will preside over your deliberations and will speak for you here in court.

And I will explain the verdict form to you as soon as the attorneys have presented closing arguments.